Supreme Court, U. S.
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In the Supreme Court of the United States

No. 78-1841

JULIUS T. CUYLER, MILTON SHAPP,
Petitioners

v.

JOHN ADAMS,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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June, 1979

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TABLE OF CONTENTS

	PAGE
Petition for a Writ of Certiorari	1
Opinions Below	2
Jurisdiction	2
Question Presented	3
Statutes Involved	4
Statement	5
REASONS FOR GRANTING PETITION:	
The Third Circuit has rendered a decision in conflict with the decision of another circuit	6
The Third Circuit has rendered a decision in conflict with the decisions of the highest courts of four states which have reviewed this matter	7
Conclusion	8
Appendix A—Opinion of the United States Court of Appeals for the Third Circuit, Filed February 9, 1979	1a
Appendix B—Memorandum and Order of the United States District Court for the Eastern District, Filed October 26, 1977	14a
Appendix C—Interstate Agreement on Detainers, Pa. Stat. Ann. Tit. 19, §§1431-1438 (Purdon 1964)	20a
Appendix D—Uniform Criminal Extradition Act, Pa. Stat. Ann. Tit. 19, §§191.1-.31 (Purdon 1964 & Supp. 1978)	32a

TABLE OF CITATIONS

CASES:

Atkinson v. Hanberry, 589 F.2d 917 (5th Cir. 1979) 6

Commonwealth ex rel. Coleman v. Cuyler, —— Pa. Superior Ct. ——, 396 A.2d 394 (1978) 7

Hystad v. Rhay, 12 Wash. App. 872, 533 P. 2d 409 (1975) 7

Moen v. Wilson, 189 Colo. 85, 536 P.2d 1129 (1975) 7

State v. Thompson, 133 N. J. Super. 180, 336 A.2d 11 (1975) 7

State ex rel. Garner v. Gray, 55 Wis. 2d 574, 201 N. W. 2d 163 (1972) 7

United States ex rel. Esola v. Groomes, 520 F.2d 830 (3d Cir. 1975) 6

Wertheimer v. State, 294 Minn. 293, 201 N. W. 2d 383 (1972) 7

STATUTES:

Civil Rights, Act, 42 U.S.C. §§1981, 1983 5

Interstate Agreement on Detainers, Pa. Stat. Ann. Tit. 19, §§1431-1483 .....4, 5, 6, 7, 8

Uniform Criminal Extradition Act, Pa. Stat. Ann. Tit. 19, §§191.1-.31 .....4, 5, 6, 7

PETITION

IN THE SUPREME COURT OF THE UNITED STATES

No.

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v.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The Petitioners, Julius T. Cuyler, and Milton Shapp, respectfully pray that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Third Circuit, entered in this proceeding on February 9, 1979.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit, reversing the opinion of the United States District Court, is reported at 592 F.2d 720 (3d Cir. 1979). A copy of this opinion is printed in Appendix A hereto (App. 1a-3a).

The opinion of the United States District Court is reported at 441 F. Supp. 556 (E.D. Pa. 1977). A copy of this opinion is printed in Appendix B hereto (14a-19a).

JURISDICTION

The judgment of the United States Court of Appeals was entered on February 9, 1979. Petitioners' prayer for enlargement of time granted petitioners until June 9, 1979 to file a petition for a writ of certiorari. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1), §2101(c).

QUESTION PRESENTED

Whether Article IV of the Interstate Agreement on Detainers requires that interstate transfers of inmates be accompanied by the same procedural safeguards afforded to inmates transferred pursuant to the Uniform Criminal Extradition Act.

STATUTES INVOLVED

The statute principally involved is the Interstate Agreement on Detainers, Pa. Stat. Ann. Tit. 19, §§1431-1438 (Purdon 1964), which is set forth in Appendix C. (App. 20a). Also involved is the Uniform Criminal Extradition Act, Pa. Stat. Ann. Tit. 19, §§191.1-.31 (Purdon 1964 & Supp. 1978), which is set forth in Appendix D. (App. 32a).

STATEMENT

This action is brought pursuant to the Civil Rights Act, 42 U.S.C. §§1981, 1983, by an inmate whose interstate transfer was effectuated pursuant to Article IV of the Interstate Agreement on Detainers, Pa. Stat. Ann. Tit. 19, §§1431-1438[1] (hereinafter Detainer Act). In his complaint, the inmate challenged the constitutionality of the Detainer Act, contending that the failure of the Detainer Act to provide that the inmate be advised of his right to petition the governor for review of the custody request, as well as the absence of any pre-transfer hearing provisions constitute a violation of due process rights. Furthermore, the complaint alleged that the failure to apply the hearing requirements of the Uniform Criminal Extradition Act, Pa. Stat. Ann. Tit. 19, §§191.1-.31 (hereinafter Extradition Act), to transfers made pursuant to Article IV of the Detainer Act, deprived the inmate of the equal protection of the law. The United States District Court dismissed the complaint for failure to state a claim.

An appeal was taken, and the United States Court of Appeals for the Third Circuit found it unnecessary to reach the constitutional issues raised by appellant, but concluded on the basis of statutory construction that the procedural safeguards provided in the Extradition Act also apply to prisoners subject to interstate transfer pursuant to Article IV of the Detainer Act.

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[1] The Federal Government is also a party to the "Interstate Agreement on Detainers". Pub. Law 91-538, Dec. 9, 1970, 84 Stat. 1397, 18 U.S.C.A. App.

REASONS FOR GRANTING THE PETITION

The Third Circuit Has Rendered a Decision in Conflict With the Decision of Another Circuit

The Detainer Act, a compact among forty-seven states and the United States, provides the exclusive and uniform method for the disposition of detainers lodged against prisoners. *United States ex rel. Esola v. Groomes,* 520 F.2d 830 (3d Cir. 1975). The Court of Appeals for the Third Circuit has concluded as a matter of statutory construction that Section IV(d) of the Detainer Act reserves to the prisoner all rights granted him under the Extradition Act, the most significant being the right to a pre-transfer hearing before a court of record.

This holding is in conflict with the Fifth Circuit decision in *Atkinson v. Hanberry,* 589 F.2d 917 (5th Cir. 1979). In *Atkinson,* the plaintiff sought to expunge a detainer and enjoin a Detainer Act transfer from a federal prison in Georgia to a state prison in Ohio. The district court refused plaintiff relief and on appeal the inmate argued that Article IV of the Detainer Act and the Due Process Clause of the Fifth Amendment entitle him to a hearing prior to his transfer. After focusing on Article IV(d), the same provision of the statute relied upon by the Third Circuit to arrive at its decision, the Fifth Circuit in *Atkinson* concluded that an inmate does not have a statutory right to a pre-transfer hearing, nor, by implication, to any other Extradition Act procedures.

The Third Circuit Has Rendered a Decision in Conflict With the Decisions of the Highest Courts of Four States Which Have Reviewed This Matter

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The courts of six states have reviewed the pre-transfer rights of inmates who are to be transferred pursuant to the provisions of the Detainer Act. In four of these states, Pennsylvania, Minnesota, New Jersey, and Washington[2], the courts have held that the inmate is not entitled to a pre-transfer hearing on statutory or constitutional grounds. However, in the remaining two states, Wisconsin and Colorado[3], the courts held, on constitutional grounds, that a pre-transfer hearing is required for transfers under the Detainer Act.

By reading Extradition Act procedural requirements into Article IV(d) of the Detainer Act, the Third Circuit has, in fact, rendered Article IV of the Detainer Act meaningless. No useful purpose could be served where a prosecuting authority proceeds under Article IV(d) of the Detainer Act since all the requirements of the Extradition Act must be fulfilled as well. The Court's holding in the instant case therefore has the effect of rendering Article IV(d) of the Detainer Act redundant.

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[2] *Commonwealth ex rel. Coleman v. Cuyler,* —— Pa. Superior Ct. ——, 396 A.2d 394 (1978); *Wertheimer v. State,* 294 Minn. 293, 201 N.W. 2d 383 (1972); *State v. Thompson,* 133 N.J. Super. 180, 336 A.2d 11 (1975); *Hystad v. Rhay,* 12 Wash. App. 872, 533 P.2d 409 (1975).

[3] *State ex rel. Garner v. Gray,* 55 Wis. 2d 574, 201 N.W. 2d 163 (1972), and in *Moen v. Wilson,* 189 Colo. 85, 536 P. 2d 1129 (1975), the Courts decided that an extradition type hearing was required on equal protection grounds.

CONCLUSION

The Detainer Act is a statute of national applicability, and consequently its interpretation has a significant impact on the administration of the American criminal justice system. The conflicting statutory interpretation of Article IV (d) offered by the Third Circuit and Fifth Circuit Courts undermines one of the goals of the nationwide compact of the states and the United States: the speedy and uniform application of a specific procedure to the interstate transfer of those prisoners against whom a detainer has been lodged.

Similarly, the state courts which have dealt with the issue are divided. The inevitable confusion caused by the differing interpretation of the same statute can be eliminated by a decision from this Court.

For these reasons, the Court should issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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June, 1979

APPENDIX A

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 78-1021

JOHN ADAMS, and all others similarly situated,
Appellants

v.

JULIUS T. CUYLER, Superintendent, State Correctional Institution, Graterford, Pennsylvania; THOMAS J. SHUSTED, Prosecutor, Camden County, New Jersey; BRENDAN D. BYRNE, Governor of New Jersey; MILTON SHAPP, Governor of Pennsylvania; JOHN DOE, and RICHARD DOE, Detectives, Camden County, New Jersey,
Appellees

Appeal From the United States District Court for the Eastern District of Pennsylvania
(D.C. Civil No. 77-2075)

Argued November 14, 1978
Before: Seitz, Chief Judge and Gibbons and Weis, Circuit Judges
(Opinion filed February 9, 1979)

James D. Crawford, Esq., James A. Shellenberger, Esq., M. Eileen Marquette, Esq., Schnader, Harrison, Segal & Lewis, 1719 Packard Building, Philadelphia, PA 19102, Attorneys for Appellants.

Jerry I. Drew, Esq., Asst. Attorney General, Maria Parisi Vickers, Esq., Asst. Attorney General, Michael von Moschzisker, Deputy Attorney General, Eastern Regional Director, Gerald Gornish, Esq., Attorney General, 206 State Office Bldg., Philadelphia, PA 19130, Attorneys for Appellees.

OPINION OF THE COURT

Weis, Circuit Judge

This class action challenges the constitutionality of the Interstate Agreement on Detainers, Pa. Stat. Ann. tit. 19, §§1431-1438 (Purdon 1964) (Agreement), and is brought by plaintiff Adams, an inmate of the State Correctional Institution at Graterford, Pennsylvania. After careful review, we find it unnecessary to decide the constitutional issues, but conclude on statutory grounds that procedural safeguards porvided in the Uniform Criminal Extradition Act, Pa. Stat. Ann. tit. 19, §§191.1-.31 (Purdon 1964 & Supp. 1978) (Extradition Act), also apply to prisoners subject to Article IV of the Detainer Agreement. We therefore will vacate the judgment of the district court dismissing plaintiff's complaint.

In May, 1977, New Jersey sent a request for temporary custody under the Agreement to the appropriate Pennsylvania authorities so that Adams could be brought to Camden, New Jersey for trial on charges of armed robbery and other offenses. He challenged the transfer

in the district court under the Civil Rights Act, 42 U.S.C. §§1981, 1983, seeking injunctive and declaratory relief, as well as damages. The pro se complaint alleged that plaintiff was not in New Jersey when the crime occurred and that an alibi witness had died in the interval created by the porsecutor's delay in lodging the detainer. Plaintiff contends that had he been given the procedural rights of the Extradition Act, the Pennsylvania courts would not have permitted his transfer. The district judge dismissed the complaint for failure to state a claim. *Adams v. Cuyler,* 441 F. Supp. 556 (E.D. Pa. 1977).

Adams received a copy of the request for temporary custody delineating the nature of the indictment lodged against him, but this notice did not contain a copy of the Agreement. Plaintiff contends that the failure to advise him of his right under Article IV of the Agreement to petition the governor for review of the custody request, as well as the absence of any pretransfer hearing provisions, constitute due process violations. He asserts, also, that the refusal of state authorities to apply the hearing requirement of the Extradition Act denies the afffected prisoners equal protection under the law.

I.

The Interstate Agreement on Detainers is a compact among 47 states and the United States.[1] *United States ex rel. Esola v. Groomes,* 520 F.2d 830 (3d Cir. 1975). It

[1] Article I, §10 of the Constitution commands that all interstate agreements or compacts have the approval of Congress. Authorization for the Interstate Agreement on Detainers may be found in 4 U.S.C. §112(a), which provides:

"The consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooper-

was designed to end the many abuses of the detainer system, and to minimize disruption of the rehabilitative process by giving prisoners a means of insuring expeditious disposition of outstanding criminal charges. As discussed in *United States v. Mauro,* —— U.S. ——, 46 U.S.L.W. 4491 (U.S. May 23, 1978), the Agreement is an improvement, from both the prisoners' and states' viewpoints, over previous detainer arrangements.

Before embarking on an examination of the plaintiff's contention, we must determine if statutory construction will negate the need to confront the constitutional challenges. *Hagans v. Lavine,* 415 U.S. 528, 543 (1974). We turn, therefore, to a review of the pertinent parts of the Detainer Agreement.

Article III of the Agreement provides that a person serving a term of imprisonment is to be given notice of a detainer lodged against him by the authorities of another state and has the right to demand disposition of the underlying indictment or criminal complaint. If the prisoner requests that the pending case be processed, he is then transferred to the accusing state where trial must be had within 180 days. Article III (a). This article enables the prisoner to compel the prosecuting authorities in the accusing state to dispose of all pending charges. *See* Article III (d).

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ative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts."

In 1970, the United States Government, on behalf of itself and the District of Columbia, joined the compact. Pub. L. No. 91-538, §§1-8, 84 Stat. 1397 (1970).

Article IV is addressed to the prosecution and allows the authorities of the charging state to secure temporary custody of the prisoner so that he may be tried on outstanding indictments or complaints. Section (a) of that Article provides a simplified procedure for arranging transfer of the prisoner. The prosecutor, with the approval of the court that issued the indictments or complaint, serves a written notice upon the authorities of the asylum state. After a 30-day period when the governor of the asylum state may disapprove the request either upon his own motion or that of the prisoner, custody is granted to the accusing state. Article IV contains a speedy trial provision as well, which requires commencement of proceedings within 120 days after arrival in the accusing state. *See* Article IV (c).

Before adoption of the Agreement, the only method available to prosecutors to obtain custody of a person in another state was the extradition process. The procedure under the Extradition Act is more elaborate than that spelled out in the Interstate Detainer Agreement. In an extradition proceeding, the governor of the demanding state asks the governor of the asylum state to deliver the accused. The accused is then entitled to a hearing with the aid of counsel[2] before a judge of a court of record. There it must be shown that: the subject has been charged with the crime in the demanding state; the subject is a fugitive from that state; the subject was present in the de-

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[2] We have no occasion at this time to reconsider our earlier ruling that the state is not required to furnish counsel to indigent prisoners at extradition proceedings. See United States ex rel. Huntt v. Russell, 285 F. Supp. 765, 767 (E.D. Pa. 1968), aff'd per curiam, 406 F.2d 774 (3d Cir. 1969).

manding state at the time the crime was committed; the required papers are in order and the subject is in fact the person being charged. *Commonwealth ex rel. Marshall v. Gedney,* —— Pa. ——, ——, 386 A.2d 942, 945 (1978).

The petitioner here asserts that there has been a denial of equal protection because these procedural measures were not available to him before his transfer under the Detainer Agreement. He contends that since prisoners requested by a state not a party to the Agreement receive these statutory benefits, the Equal Protection Guarantee of the United States Constitution is offended. This argument has been accepted by some state appellate courts, see *Moen v. Wilson,* —— Colo. ——, 536 P.2d 1129 (1975); *State ex rel. Garner v. Gray,* 55 Wis. 2d 574, 201 N.W. 2d 163 (1972), and rejected by others, *Wertheimer v. State,* 294 Minn. 293, 201 N.W. 2d 383 (1972); *State v. Thompson,* 133 N.J. Super. 180, 336 A.2d 11 (1975); *Commonwealth ex rel. Coleman v. Cuyler,* —— Pa. Super. Ct. ——, —— A.2d —— (Dec. 22, 1978). Our reading of the Agreement obviates the need to answer Adams' contention.

In granting the prisoner the right to demand disposition of outstanding charges, Article III imposes a significant limitation in section (e):

> "Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein . . . and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for

> final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment . . . ."

The Extradition Act remained in effect after adoption of the Agreement, but when a prisoner chooses to claim the benefits of Article III, he must give up the procedural safeguards of the Extradition Act.

Article IV of the Agreement, which confers power on the out-of-state prosecutor to secure custody of an accused prisoner, contains no explicit provision with respect to extradition. There is, however, an oblique but pregnant reference in section (d) which reads:

> "Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery."

We construe section (d) as reserving to the prisoner the rights granted to him under the existing Extradition Acts, absent, of course, the specified exception. Our interpretation is consistent with that of the Council of State Governments, which approved the text of the Detainer Agreement at its 1956 conference. In its comments on the draft, the Council stated:

> "*Article IV(d)* safeguards certain of the prisoner's rights. Normally, the only way to get a

> prisoner from one jurisdiction to another for purposes of trial on an indictment, information or complaint is through resort to extradition or waiver thereof. If the prisoner waives, there is no problem. However, if he does not waive extradition, it is not appropriate to attempt to force him to give up the safeguards of the extradition process, even if this could be done constitutionally. Nevertheless, the right to insist on action by the governor is a right of state and not of the prisoner. Consequently, it is provided that the prisoner shall not be able to plead gubernatorial inactivity in resisting delivery to the other state. The situation contemplated by this portion of the agreement is different than that dealt with in Article III. That article relates to proceedings initiated at the request of the prisoner. Accordingly, in such instances it is fitting that the prisoner be required to waive extradition. In Article IV the prosecutor initiates the proceeding. Consequently, it probably would be improper to require the prisoner to waive those features of the extradition process which are designed for the protection of his rights."

Council on State Government, Suggested State Legislation, Program for 1957, at 78-79 (1956). *See also* Meyer, *Effective Utilization of Criminal Detainer Procedures,* 61 Iowa L. Rev. 659 (1975).

The Council's comments are consistent with the extradition waiver requirements of Article III and explain the savings proviso of Article IV(d). Nowhere in the Agreement is there any indication that the procedural protections of the Extradition Act are abrogated by Article IV and there is no inconsistency between the two enact-

ments, other than the requirement of affirmative action by the asylum governor. Moreover, the fact that Article IV(d) does specifically refer to one minor procedural feature of the extradition process which is to be affected suggests forcefully that the other aspects, particularly those furnishing safeguards to the prisoner, are to continue in effect.[3]

We need not and do not decide whether the Detainer Act could constitutionally eliminate prisoners' rights under the Extradition Act. It is enough that the Agreement does not purport to do so. In a situation of this nature where a statute confers certain procedural rights, the enactment of legislation at a later date does not act as a repeal by implication in the absence of substantial inconsistency between the statutes or evidence of an intention to limit or abolish the rights. To hold otherwise would render Article IV(d) meaningless, in derogation of our duty "to give effect, if possible, to every clause and word of a statute." *Montclair v. Ramsdell,* 107 U.S. 147, 152 (1882).

Our determination is not at odds with this court's opinion in *United States ex rel. Esola v. Groomes, supra.* In *Esola,* we held that the Agreement was the sole means of effecting a transfer for purposes of trial between party states. Although that case was concerned with the transfer

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[3] Our research has uncovered only one federal case mentioning Article IV(d). In Thomas v. Levi, 422 F. Supp. 1027 (E.D. Pa. 1976), a federal prisoner against whom a detainer had been lodged asserted that Article IV(d) preserved her right under the Federal Extradition Act to require that a warrant be issued by the governor of the demanding state as a precondition to extradition. But because the court held that the federal act does not apply to prisoners transferred from federal to state custody, it had no reason to reach the Article IV(d) issue.

of a federal prisoner to a state jurisdiction, the holding is not altered when two states are involved. We continue to accept the *Esola* ruling as a necessary one for if the state authorities were to have the option of utilizing either the Extradition Act or the Detainer Agreement, the speedy trial provisions of the Agreement and its protection against the abuses of the detainer procedure could be thwarted.

Incorporating the prisoner's procedural rights under the Extradition Act is not inconsistent with *Esola* either philosophically or by its terms. The Agreement still forms the basis for the demand of the accusing state. The only substantial variation is that in carrying out the delivery of the prisoner, the hearing and notification rights of the extradition process will be implemented. To this extent, the two enactments are complementary rather than conflicting.

II.

After argument in this case, the Pennsylvania Superior Court filed its opinion in *Commonwealth ex rel. Coleman v. Cuyler, supra,* in which it rejected constitutional challenges to the Detainer Act, holding that the prisoner petitioner was not entitled to a hearing or notification of charges.[4] The court did not explore the statutory interpretation issue, but it was not urged by the petitioners, either there or in the case *sub judice*. Insofar as the Pennsylvania court discussed constitutional considerations and we rely upon statutory interpretation, the rationales are

[4] We find it difficult to understand why the Pennsylvania Attorney General's office did not advise us in either brief or oral argument of the pendency of the *Coleman* case.

not per se inconsistent. Since we reach a different conclusion, however, it is necessary to determine whether we are bound by the result reached in *Coleman*.[5]

Although a state's interpretation of its own statute is binding on the federal courts, a different result obtains when the legislation adopts an interstate compact. A compact is an agreement between two or more states and is the subject of a brief and negatively phrased authorization in the Constitution: "No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State, or with a foreign power." Atricle I, §10. In a typical situation, an agreement is reached between two or more states, enacted by their respective legislatures, and sanctioned by Congress, often in broad, general terms. At times compacts receive congressional approval before state adoption. Thus, it may be said a compact is neither exclusively a state nor federal statute but an amalgam of both—in reality, a third category.

Over the years, compacts have engendered diverse problems, such as the question of jurisdiction in the district courts, *compare League to Save Lake Tahoe v. Tahoe Regional Planning Agency*, 507 F. 2d 517 (9th Cir. 1974), *cert. denied*, 420 U.S. 974 (1975) (finding federal ques-

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[5] We are aware that the Supreme Court of Pennsylvania has not yet passed on the question, but we do have a pronouncement of an intermediate appellate court which we may assume represents state law on the issue. Federal courts are not bound to, but may consider the pronouncements of state intermediate appellate courts as an indication of how the state's highest court would rule. *See* Commissioner v. Estate of Bosch, 387 U.S. 456, 465 (1967). *Cf.* National Surety v. Midland Bank, 551 F.2d 21, 29-31 (3d Cir. 1977). *See generally* C. Wright, Law of Federal Courts §58 (3d ed. 1976).

tion jurisdiction) *with Delaware River Joint Toll Bridge Commission v. Miller,* 147 F. Supp. 270 (E.D. Pa. 1956) (rejecting jurisdiction); certiorari jurisdiction in the Supreme Court, *Delaware River Joint Toll Bridge Commission v. Colburn,* 310 U.S. 419 (1940); and, pertinent here, whether state or federal court interpretation controls, *Petty v. Tennessee-Missouri Bridge Commission,* 359 U.S. 275 (1959). In *Petty,* the Court said flatly: "The construction of a compact sanctioned by Congress under Art. I, §10, cl. 3, of the Constitution presents a federal question." *Id.* at 278. There would seem to be little doubt, therefore, that federal interpretation of the Interstate Detainers Agreement must govern. Judge Garth, concurring in *United States ex rel. Esola v. Groomes, supra,* took that position, and although the majority was content to leave the question for another day, that day has now dawned.

The underlying theory of federal predominance in the interpretation of interstate compacts is that they become a "law of the Union" because of congressional sanction. *See Pennsylvania v. The Wheeling & Belmont Bridge Co.,* 54 U.S. (13 How.) 518, 566 (1851). Yet this rationale has been strongly criticized. For example, a compact may treat matters not assigned to Congress by the Constitution and a new and questionable area may be opened to federal over-sight. In some instances, moreover, because approval is given before the precise terms of the compact have been determined, Congress never actually passes upon the language of the enactment that is said to be a "law of the Union." *See* Engdahl, *Construction of Federal Compacts: A Questionable Federal Question,* 51 Va. L. Rev. 987, 1040-47 (1965).

However valid these objections might be, they are not present in this case. Article IV, §2 of the Constitution places extradition in the federal domain, and Congress has legislated in this area since 1793, when it passed the first Federal Extradition Act, Act of February 12, 1793, ch. VII, 1 Stat. 302 (1793) (current version at 18 U.S.C. §3182). And although it is true that the compact was sanctioned in advance in only general terms, the Detainer Agreement was later adopted by Congress, ipsissimis verbis, when it made the United States a party.[6] There is thus a strong federal interest here to provide a uniform interpretation of a cooperative federal-state venture.

Accordingly, we express no opinion on the constitutional reasoning advanced in *Coleman,* since it is not binding upon us. Our analysis of the statute persuades us that prisoners may be transferred under Article IV of the Agreement only after being given the opportunity for a hearing provided in the Extradition Act, Pa. Stat. Ann. tit. 19, 191.10 (Purdon 1964). Therefore, the judgment of the district court will be vacated and the case will be remanded for further proceedings consistent with this opinion, including consideration of the propriety of declaratory relief applicable to members of the class.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit

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[6] We are not here confronted with the issue whether jurisdiction under the federal question statute, 28 U.S.C. §1331 is present. Plaintiff asked for a declaratory judgment and declaratory relief under §§1981 and 1983, jurisdiction being asserted under 28 U.S.C. §1343.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 77-2075

JOHN ADAMS

v.

JULIUS T. CUYLER and THOMAS J. SHUSTED and BRENDEN T. BYRNE and MILTON SHAPP and JOHN DOE and RICHARD ROE

MEMORANDUM OF DECISION

McGlynn, J.

This case is a civil rights action brought by the plaintiff, John Adams, for himself and all others similarly situated. Plaintiff is seeking damages, declaratory, and injunctive relief based on alleged constitutional violations occasioned by the transfer of prisoners from Pennsylvania to New Jersey pursuant to the Interstate agreement on Detainers, Pa. Stat. Ann. tit. 19, §1431 (Purdon 1964) (Detainer Agreement).

Plaintiff was, at the time this complaint was filed, incarcerated in the State Correctional Institute at Grater-

ford, Pennsylvania. He has since been remanded to the custody of the appropriate authorities of Camden County, New Jersey in response to their request for temporary custody made under Article IV of the Detainer Agreement.[1] Plaintiff claims that although he was given a copy of the request made by the New Jersey officials, he was never "informed of his constitutional rights" with respect thereto.

The complaint asserts that the Detainer Agreement as applied has two separate constitutional deficiencies which entitle the plaintiff to the requested relief. First, it is contended that the practice of not informing prisoners of their constitutional and statutory rights in connection with an interstate transfer violates the due process clause of the fourteenth amendment. Second, it is asserted that the fact that persons transferred interstate under the Detainer Agreement are not afforded the same procedural rights as persons transferred under the Uniform Criminal Extradition Act, Pa. Stat. Ann. tit. 19, §191.1-§191.31 (Purdon 1964) (Extradition Act), violates the equal protection clause of the fourteenth amendment. I find that both claims are without merit and, therefore, dismiss the complaint for failure to state a claim upon which relief can be granted.

The plaintiff's due process claim must be dismissed because, simply stated, the plaintiff has no constitutional or statutory rights of which he could be informed. It is well settled that there is no constitutional right to any procedure to challenge an extradition. *See e.g., Feilke v.*

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[1] Because of plaintiff's requests for damages and class representation, the fact that plaintiff has already been transferred does not make the action moot. *Danzy v. Johnson*, 417 F. Supp. 426 (E.D. Pa. 1976).

Governor of New Jersey, 414 F. Supp. 10 (E.D. Pa. 1976). The civil rights statutes do not provide a remedy for an individual who is involuntarily transferred interstate in violation of the extradition statutes. *Hines v. Guthery,* 342 F. Supp. 594 (W.D. Va. 1972); *Johnson v. Buie,* 312 F. Supp. 1349 (W.D. Mo. 1970). In fact, the Supreme Court has held that a criminal defendant's rights are not violated when the prosecuting state forcibly abducts the defendant from another judisdiction. *Frisbie v. Collins,* 342 U.S. 519 (1952); *Ker v. Illinois,* 119 U.S. 436 (1886). In *Frisbie,* the Court stated:

> [D]ue process is satisfied when one present in court is convicted of crime after having been fairly apprised of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will.

Frisbie v. Collins, supra at 522. Similarly, the plaintiff here cannot assert any constitutional right to any type of review prior to being transferred to the New Jersey authorities. *Cf. Meachum v. Fano,* 427 U.S. 215 (1976); *Montanye v. Haymes,* 427 U.S. 316 (1976). (Normally there is no due process required when prisoners are transferred intrastate).

In addition to asserting a constitutional right to review, the plaintiff contends that he has a statutory right to petition the Governor of Pennsylvania to block his transfer to New Jersey. It is claimed that the failure to inform prisoners of this alleged right is an unconstitutional denial of due process. I need not decide that issue,

however, since I have concluded that while the Governor has the power to deny another state's request for custody of a Pennsylvania prisoner, the prisoner has no "right" to have his case reviewed by the Governor. The plaintiff, apparently seeks to harvest a right from the following language of the Detainer Agreement:

> [T]here shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

Pa. Stat. Ann. tit. 19 §1431, Art. IV(a). I do not believe, however, that because the governor has the power to act on a prisoner's request, the prisoner has a constitutional right to be specifically advised of his ability to move the Governor to disapprove the request for temporary custody. *Cf. United States v. Rothman,* 492 F.2d 1260 (9th Cir. 1973); *United States v. Horton,* 488 F.2d 374 (5th Cir. 1973) (There is no requirement that a defendant be apprised of his right to refuse permission to search in order to give a valid consent).

The plaintiff's equal protection claim is without merit because there is a rational basis for treating prisoners sought by other states in a different manner than persons who are at large in the state in which they are found. There need only be a rational basis for the disparate treatment in order that the classification survive judicial scrutiny. *McGinnis v. Royster,* 410 U.S. 263 (1972); *James v. Strange,* 407 U.S. 128 (1972); *Schilb v. Kuebel,* 404 U.S. 357 (1970); *Dandridge v. Williams,* 397 U.S. 471 (1970).

The rational basis in the present classification is evident once the purpose of providing a hearing prior to a transfer under the Extradition Act is understood. In *Johnson v. Buie, supra,* the court, in describing that purpose, stated:

> The theory behind permitting the fugitive to petition for habeas corpus in the asylum state is that it is a method of challenging the legality of his detention there. Once the accused has been brought within the custody of the demanding state, the legality of the extradition is no longer a proper subject of any legal attack by him.

312 F. Supp. at 1351. The plaintiff in this case is not challenging the legality of his incarceration in Pennsylvania, and, therefore, there is no reason to allow him the process available under the Extradition Act. Thus, not only is there a rational basis for *not* proceeding under the Extradition Act when transferring inmates interstate, there would be no rational basis for not utilizing the expeditious procedure under the Detainer Agreement.

In conclusion, I find no constitutional deficiencies in the Interstate Agreement on Detainers either on its face or as applied and consequently dismiss the complaint for failure to state a claim upon which relief can be granted.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 77-2075

JOHN ADAMS

v.

JULIUS T. CUYLER and THOMAS J. SHUSTED and BRENDEN T. BYRNE and MILTON SHAPP and JOHN DOE and RICHARD ROE

ORDER

AND NOW, this 21st day of OCTOBER, 1977, it is hereby

ORDERED that the complaint in the above-captioned case be DISMISSED for failure to state a claim upon which relief can be granted.

BY THE COURT:
(s) Joseph L. McGlynn, Jr.
Joseph L. McGlynn, Jr., *J.*

APPENDIX C

CRIMINAL PROCEDURE
CHAPTER 18—DETAINERS

Sec.

1431. Agreement and procedure.
1432. Appropriate court.
1433. Enforcement and cooperation.
1434. Second and subsequent offenses.
1435. Escape.
1436. Duty of warden or other official.
1437. Administrator and information agent.
1438. Copies of act.

Library References

Prisons 14; C.J.S. Prisons §20.

§1431. Agreement and procedure

The Agreement on Detainers is hereby enacted into law and entered into by this Commonwealth with all other jurisdictions legally joining therein in the form sugstantially as follows:

Agreement on Detainers

The contracting states solemnly agree that:

Article I.

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedure. It is the further purpose of this agreement to provide such cooperative procedures.

Article II.

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III. hereof or at the time that a request for custody or availability is initiated pursuant to article IV. hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to article III. or article IV. hereof.

Article III.

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: Provided, That for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall prompt-

ly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph, shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If the trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or, effect and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final

disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purpose of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV.

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V. (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: Provided, That the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: And provided further, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the

officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V. (c) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V.

(a) In response to a request made under article III. or article IV. hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III. of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article

III. or article IV. hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order, dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in

the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being held[1] shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI.

(a) In determining the duration and expiration dates of the time periods provided in article III. and IV. of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

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[1] Enrolled bill reads "had".

Article VII.

Each state party to this agreement shall designate an officer who, acting jointly with like officer of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII.

This agreement shall enter into full force and effect as to party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX.

This agreement shall be liberally construed so as to effectuate its purpose. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and ef-

fect as to the state affected as to all severable matters 1959, Sept. 8, P.L. 829, No. 324, §1.

§1432. Appropriate court

The phrase "appropriate court" as used in the Agreement on Detainers shall, with reference to the courts of this Commonwealth, mean any criminal court or any court having jurisdiction over indictable offenses. 1959, Sept. 8, P.L. 829, No. 324, §2.

§1433. Enforcement and cooperation

All courts, departments, agencies, officers and employes of this Commonwealth and its political subdivisions are hereby directed to enforce the Agreement on Detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose. 1959, Sept. 8, P.L. 829, No. 324, §3.

§1434. Second and subsequent offenses

Nothing in this act or in the Agreement on Detainers shall be construed to require the application of section 1108 of the act of June 24, 1939 (P.L. 872),[1] to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement. 1959, Sept. 8, P.L. 829, 324, §4.

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[1] Section 5108 of Title 18, Crimes and Offenses.

§1435. Escape

Escape from custody while in another state pursuant to the Agreement on Detainers, shall constitute an offense against the laws of this Commonwealth to the same ex-

tent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the Agreement on Detainers, and shall be punishable in the same manner as an escape from said institution. 1959, Sept. 8, P.L. 829, No. 324, §5.

§1436. Duty of warden or other official

It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this Commonwealth to give over the person of any inmate thereof whenever so required by the operation of the Agreement on Detainers. 1959, Sept. 8, P.L. 829, No. 324, §6.

§1437. Administrator and information agent

The Commissioner of the Bureau of Correction will serve as central administrator of and information agent for the Agreement on Detainers. 1959, Sept. 8, P.L. 829, No. 324, §7.

§1438. Copies of act

Copies of this act shall, upon its approval, be transmitted to the Governor of each state, the Attorney General and the Secretary of State of the United States, and The Council of State Governments. 1959, Sept. 8, P.L. 829, No. 324, §8.

APPENDIX D

UNIFORM CRIMINAL EXTRADITION ACT

Library references: Extradition 21 et seq.: C. J. S. Extradition §§1, 2 et seq.: P. L. E. Extradition §1 et seq.

§191.1 Definitions

Where appearing in this act the term "Governor" includes any person performing the functions of governor by authority of the law of this State. The term "executive authority" includes the Governor and any person performing the functions of governor in a state other than this State. The term "state", referring to a state other than this State, includes any other state or territory, organized or unorganized, of the United States of America. 1941, July 8, P.L. 288, §1.

§191.2 Fugitives from justice; duty of governor

Subject to the provisions of this act, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this State to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this State. 1941, July 8, P.L. 288, §2.

§191.3 Form of demand

No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing, alleging, except in cases arising under section 6,[1] that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state, and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand. 1941, July 8, P.L. 288, §3.

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[1] Section 101.0 of this title.

§191.4 Governor may investigate case

When a demand shall be made upon the Governor of this State by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney General or any prosecuting officer in this State to investigate or assist in

investigating the demand and to report to him the situation and circumstances of the person so demanded and whether he ought to be surrendered. 1941, July 8, P.L. 288, §4.

§191.5 Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion

When it is desired to have returned to this State a person charged in this State with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor of this State may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this State as soon as the prosecution in this State is terminated.

The Governor of this State may also surrender on demand of the executive authority of any other state any person in this State who is charged, in the manner provided in section 23 of this act,[1] with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily. 1941, July 8, P.L. 288, §5.

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[1] Section 191.23 of this title.

§191.6 Extradition of persons not present in demanding state at time of commission of crime

The Governor of this State may also surrender on demand of the executive authority of any other state any person in this State charged in such other state in the

manner provided in section 3 [1] with committing an act in this State or in a third state intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent shall apply to such cases even though the accused was not in that state at the time of the commission of the crime and has not fled therefrom. 1941, July 8, P.L. 288, §6.

[1] Section 191.3 of this title.

§191.7 Issue of governor's warrant of arrest; its recitals

If the Governor decides that the demand should be complied with he shall sign a warrant of arrest which shall be sealed with the State seal and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. 1941, July 8, P.L. 288, §7.

§191.8 Manner and place of execution

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the State and to command the aid of all peace officers or other persons in the execution of the warrant and to deliver the accused, subject to the provisions of this act, to the duly authorized agent of the demanding state. 1941, July 8, P.L. 288, §8.

§191.9 Authority of arresting officer

Every such peace officer or other person empowered to make the arrest shall have the same authority in arrest-

ing the accused to command assistance therein as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance. 1941, July 8, P.L. 288, §9.

§191.10 Rights of accused person; application for writ of habeas corpus

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this State who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel, and, if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody and to the said agent of the demanding state. 1941, July 8, P.L. 288, §10.

§191.11 Penalty for noncompliance with preceding section

Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the Governor's warrant in willful disobedience to the last section shall be guilty of a misdemeanor, and, on conviction, shall be fined not more than $1,000.00, or be im-

prisoned not more than six months, or both. 1941, July 8, P.L. 288, §11.

§191.12 Confinement in jail; when necessary

The officer or persons executing the Governor's warrant of arrest or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city or borough, through which he may pass, and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this State with such a prisoner for the purpose of immediately returning such prisoner to the demanding state, may, when necessary, confine the prisoner in the jail of any county or city or borough through which he may pass, and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping: Provided, however, That such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this State. 1941, July 8, P.L. 288, §12.

§191.13 Arrest prior to requisition

Whenever any person within this State shall be charged on the oath of any credible person before any judge or magistrate of this State with the commission of any crime in any other state, and, except in cases arising under section 6,[1] with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this State, setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 6,[1] has fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation or parole and is believed to be in this State, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein wherever he may be found in this State and to bring him before the same or any other judge, magistrate or court who or which may be available in, or convenient of, access to the place where the arrest may be made to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. 1941, July 8, P.L. 288, §13.

§191.14 Arrest without a warrant

The arrest of a person may be lawfully made by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged

in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed, and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section,[1] and thereafter his answer shall be heard as if he had been arrested on a warrant. 1941, July 8, P.L. 288, §14.

§191.15 Commitment to await requisition; bail

If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, and, except in cases arising under section 6,[1] that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time, not exceeding thirty days, and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense unless the accused give bail as provided in the next section,[2] or until he shall be legally discharged. 1941, July 8, P.L. 288, §15.

§191.16 Bail in what cases; conditions of bond

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this State may admit the person arrested to bail by bond with sufficient sureties and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond and for his surrender to be arrested upon the warrant of the Governor of this State. 1941, July 8, P.L. 288, §16.

§191.17 Extension of time of commitment; adjournment

If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period, not to exceed sixty days, or a judge or magistrate may again take bail for his appearance and surrender, as provided in section 16,[1] but within a period not to exceed sixty days after the date of such new bond. 1941, July 8, P.L. 288, §17.

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[1] Section 101.10 of this title.

§191.18 Forfeiture of bail

If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate by proper order shall declare the bond forfeited and order his immediate arrest without warrant if he be within this State. Recovery may be had on such bond in the name of the State as in the case of other bonds given by the accused in criminal proceedings[1] within this State. 1941, July 8, P.L. 288, §18.

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[1] Enrolled bills reads "preedings."

Library references: P.L.E. Bail §16; Extradition §1.

Historical Note

Uniform Law:

This section is similar to the provisions of section 18 of the Uniform Criminal Extradition Act, see Uniform Laws Annotated, volume 9.

§191.19 Persons under criminal prosecution in this state at time of requisition

If a criminal prosecution has been instituted against such person under the laws of this State and is still pend-

ing, the Governor in his discretion either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this State. 1941, July 8, P.L. 288, §19.

§191.20 Guilt or innocence of accused; when inquired into

The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor, or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime. 1941, July 8, P.L. 288, §20.

§191.21 Governor may recall warrant or issue alias

The Governor may recall his warrant of arrest or may issue another warrant whenever he deems proper. 1941, July 8, P.L. 288, §21.

§191.22 Fugitives from this state; duty of governor

Whenever the Governor of this State shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this State, from the executive authority of any other state, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this State to some agent commanding him to receive the

person so charged if delivered to him and convey him to the proper officer of the county in this State in which the offense was committed. 1941, July 8, P.L. 288, §22.

§191.23 Application for issuance of requisition; by whom made; contents

I. When the return to this State of a person charged with crime in this State is required the prosecuting attorney shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this State for trial, and that the proceeding is not instituted to enforce a private claim.

II. When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board or the warden of the institution or sheriff of the county from which escape was made shall present to the Governor a written application for a requisition for the return of such person in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be,

including the location of the person therein at the time application is made.

III. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information, and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction, or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application with the action of the Governor indicated by endorsement thereon and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction, or of the sentence, shall be filed in the office of the Secretary of the Commonwealth to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition. 1941, July 8, P.L. 288, §23.

§191.24 Costs and expenses

All costs and expenses shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. 1941, July 8, P.L. 288, §24.

§191.25 Immunity from service of process in certain civil actions

A person brought into this State by or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings, to answer which he is being or has been returned, until

he has been convicted in the criminal proceeding or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradicted. 1941, July 8, P.L. 288, §25.

§191.26 Written waiver of extradition proceedings

Any person arrested in this State charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in section 7 and 8[1] and all other procedure incidental to extradition proceedings by executing or subscribing in the presence of a judge of any court of record within this State a writing which states that he consents to return to the demanding state: Provided, however, That before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus, as provided in section 10.[2]

If and when such consent has been duly executed it shall forthwith be forwarded to the Office of the Governor of this State and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: Provided, however, That nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the pow-

ers, rights or duties of the officers of the demanding state or of this State. 1941, July 8, P.L. 288, §26.

§191.27 Non-waiver by this state

Nothing in this act contained shall be deemed to constitute a waiver by this State of its right, power or privilege to try such demanded person for crime committed within this State or of its right, power or privilege to regain custody of such person by extradition proceedings, or otherwise, for the purpose of trial, sentence or punishment for any crime committed within this State, nor shall any proceedings had under this act which result in or fail to result in extradition be deemed a waiver by this State of any of its rights, privileges or jurisdiction in any way whatsoever. 1941, July 8, P.L. 288, §27.

Historical Note

Uniform Law:

This section is similar to the provisions of section 25-B of the Uniform Criminal Extradition Act, see Uniform Laws Annotated, volume 9.

§191.28 No right of asylum; no immunity from other Criminal prosecutions while in this state

After a person has been brought back to this State by or after waiver of extradition proceedings he may be tried in this State for other crimes which he may be charged with having committed here, as well as that specified in the requisition for his extradition. 1941, July 8, P.L. 288, §28.

§191.29 Interpretation

The provisions of this act shall be so interpreted and construed as to effectuate its general purposes to make

uniform the law of those states which enact it. 1941, July 8, P.L. 288, §29.

Historical Note

Uniform Law:

This section is similar to the provisions of section 27 of the Uniform Criminal Extradition Act, see Uniform Laws Annotated, volume 9.

§191.30 Constitutionality

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. 1941, July 8, P.L. 288, §30.

§191.31 Short title

This act may be cited as the Uniform Criminal Extradition Act. 1941, July 8, P.L. 288, §32.